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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. ~~762~~ 48

BUILDING TRADES COUNCIL, ET AL.,
Petitioners,

v.

KINARD CONSTRUCTION COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

and

MOTION TO DISPENSE WITH PRINTING OF RECORD

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IN THE

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v.

KINARD CONSTRUCTION COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

To the Honorable, the Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama, entered in the above entitled case on March 13, 1953.

OPINIONS BELOW

No opinion was rendered by the trial court herein, namely, the Law and Equity Court of Franklin County, Alabama, Judge W. H. Quillin presiding. The opinion of the Supreme Court of Alabama is reported at ——— Ala. ———, ——— So. (2d) ———, 31 LRRM 2646.

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JURISDICTION

The judgment of the Supreme Court of Alabama was entered on March 13, 1953. The opinion of that Court, holding that the Alabama Courts had jurisdiction to issue a permanent injunction, at the request of an employer, to restrain alleged violations, by a labor organization, of the Labor-Management Relations Act of 1947 (hereinafter referred to as the Act) was rendered on March 13, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3).

In this case the courts below were called upon to construe and did construe a Federal statute—the Labor-Management Relations Act of 1947—, and the assertion that this construction was erroneous, as well as the assertion that the National Labor Relations Board had exclusive jurisdiction to obtain injunctions in Federal Courts for alleged violations of the Act so as to oust state courts of jurisdiction to issue injunctions against such alleged violations at the request of private parties, were both raised in appropriate motions before the Franklin County Law and Equity Court, and by appropriate Assignment of Errors in the Supreme Court of Alabama. The decision of the Alabama Supreme Court expressly dealt with these Federal questions and construed the Act to confer jurisdiction on state courts to issue the type of injunction as above indicated. In so doing such court relied upon and reaffirmed its earlier decision in *Montgomery Building and Construction Trades Council, et al.*, v. *Ledbetter Erection Company, Inc.*, ——— Ala. ———, 57 So. (2d) 121, considered by this Court in ——— U. S. ———, 31 LRRM 2130.

QUESTION PRESENTED

Whether the Labor-Management Relations Act of 1947 confers exclusive jurisdiction on the National Labor Relations board to seek injunctive relief against alleged violations of such Act so as to preclude the exercise of jurisdic-

tion by state courts to issue such injunctions at the request of private parties.

STATUTES INVOLVED

The pertinent statutory provisions, which are Section 7, Section 8(b)(1), and Section 10, subsections (a), (h), (j), and (l) of the Labor-Management Relations Act of 1947, are set forth in Appendix A attached hereto.

STATEMENT

As seen from the findings, opinion and decree of the Supreme Court of Alabama, a copy of which is attached hereto as Appendix B, this case involves the following factual situation. Respondent Kinard Construction Company was engaged in building two housing projects at Russellville, Ala., under government authority and with its aid, whose cost was $560,000. Kinard's employees were non-union and Petitioners picketed the construction job for the purpose of inducing the employees to become union members and for the purpose of obtaining a collective bargaining agreement. This picketing was found by the Alabama Supreme Court to be entirely peaceful. Upon allegations that the picketing was in violation of Section 8(b)(1) of the Taft-Hartley Act, Kinard, on February 4, 1952, obtained a temporary injunction in the Franklin County Court restraining all picketing. After trial of the case on its merits, that court, on June 19, 1952, dissolved the temporary injunction and dismissed the cause. Upon appeal to the Supreme Court of Alabama, that Court reversed the decree of the trial court and entered a decree permanently enjoining appellees "from endeavoring to compel appellant to coerce his employees to join some one of appellee unions by picketing his premises or adjacent territory. . . ."

In its opinion the Supreme Court of Alabama found the controlling question in the case to be as follows: ". . . Whether the defendant labor organizations are shown to have com-

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mitted an unfair labor practice under the Act, which would result in irreparable damage unless enjoined, and when complainant's enterprise affects commerce and an injunction would not burden the inflow of commerce, and its effect on commerce is within the limits set by the board for an exercise of its jurisdiction. . . ."

The Alabama Supreme Court found the nature and the purpose of the picketing to be as follows: ". . . Respondent labor organizations were engaged in peacefully picketing the works and enterprise of complainant to coerce complainant into agreeing that he would use in the same only union members, so as to designate the labor organization as the bargaining representative of the employees to make a union contract with complainant. . . ." The Court found that interstate commerce was sufficiently affected by Kinard's construction job so as to permit application of the Taft-Hartley Act. The Court then held that because none of Kinard's employees "were dissatisfied or sought the end which the unions demanded," and because the unions' purpose was to cause Kinard to require its employees to join the union, that therefore such picketing constituted a violation of Section 8(b) (1) of the Taft-Hartley Act, in that the employees were restrained or coerced in exercise of rights guaranteed by Section 7 of the Act. The Court further found, however, that the picketing to coerce unionization of employees "would not have been unlawful under Alabama law or policy and that it was unlawful only by virtue of the Taft-Hartley Act."

As very succinctly stated by two concurring Justices, "The Court finds that the picketing was peaceful. The conclusion of the court is not based on a holding that the objective of the pickets was unlawful under state law or that the objective ran counter to the established public policy of the state. Our conclusion is grounded on the finding that the picketing labor organizations have committed an unfair labor practice under the National Labor Relations Act, as

amended, and on the holding that court of equity of this state has jurisdiction to enjoin such practice. . . ."

SPECIFICATIONS OF ERRORS TO BE URGED

The Supreme Court of Alabama erred:

1. In holding that the Labor-Management Relations Act of 1947 did not preclude the exercise of jurisdiction by state courts to issue injunctive relief at the request of private individuals for alleged violations of that Act.

2. In failing to hold that it or the Franklin Law and Equity Court of Alabama was without jurisdiction to issue the injunction herein, enjoining alleged violations of the Labor-Management Relations Act of 1947, and in issuing such permanent injunction.

REASONS FOR GRANTING WRIT

1. This case is the exact counterpart of *Montgomery Building and Construction Trades Council, et al.*, v. *Ledbetter Erection Company, Inc.*, ——— U. S. ———, in which this court granted a petition for certiorari because of the importance of the issue there presented, but in which it ultimately dismissed the case for the sole reason that the injunction there involved was not a final one. Every reason which induced this Court to accept the Ledbetter petition is present in this case, which however does involve a final permanent injunction. Indeed, this case requires review by this court for an additional important reason not present in Ledbetter, for here the Alabama Court has construed Section 8(b)(1) of the Taft-Hartley Act in a manner directly contrary to the construction given that section by the National Labor Relations Board. See *Perry-Norvell, Inc.*, 80 NLRB 225, and also *National Maritime Union*, 78 NLRB 971. On the question of state jurisdiction to enjoin alleged violations of Taft-Hartley, the Alabama Supreme Court in the instant case relied squarely on its Ledbetter decision.

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2. The decisions of the Supreme Court of Alabama in the instant case are in direct conflict with the decisions of the Supreme Court of California in *Gerry* v. *Superior Court*, 32 Cal. (2d) 119, 194 P. (2d) 689, and of the Supreme Court of Minnesota in *Norris Grain Co.* v. *Nordaas*, 232 Minn. 91, 46 N.W. (2d) 94, petition for rehearing denied, 232 Minn. 111, and of the Supreme Court of Pennsylvania in *Garner* v. *Teamsters Union*, ——— Pa. ———, 31 LRRM 2392. These courts, together with the following trial or intermediate appellate courts, hold specifically that state courts do not have jurisdiction to enjoin alleged violations of the Labor-Management Relations Act of 1947: Mississippi Chancery Court, Leake County, in *Reed Construction Co.* v. *Jackson Building Trades Council*, 27 LRRM 2161; Tennessee Court of Appeals in *Robinson Freight Lines* v. *Teamsters Union*, 28 LRRM 2453; Pennsylvania Court of Common Pleas, Luzerne County, in *Wilkes Sportswear, Inc.*, v. *ILGWU*, 29 LRRM 2300. In addition, the decisions of the Alabama Supreme Court herein are in conflict with the rationale and reasoning of the United States Court of Appeals for the Fifth Circuit in *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. (2d) 183 and the United States Court of Appeals for the Eighth Circuit in *Amalgamated Association* v. *Dixie Motor Coach Corp.*, 170 F. (2d) 902, both of which hold that, under the Labor-Management Relations Act of 1947, the National Labor Relations Board has exclusive jurisdiction to seek injunctive relief in the Federal Courts for violations of that Act. Compare, however, *Goodwins* v. *Hagedorn*, 303 N. Y. 390; *Kincaid-Webber Motor Co.* v. *Quinn*, ——— Mo. ———, 241 S.W. (2d) 886. Also see *Lion Oil Company* v. *Marsh*, Arkansas Supreme Court, 1952, 30 LRRM 2285; *Oregon ex rel Tidewater Shaver Barge Lines* v. *Dobson*, ——— Ore. ———, 30 LRRM 2345.

Only a determination by this Court can resolve the conflict in decision as indicated above. See *Fischer* v. *Pauline Oil and Gas Company*, 309 U. S. 294, at 296. Indeed, as

indicated by the two concurring Justices of the Alabama Supreme Court in the instant case, "the question is a close one and will continue to prove perplexing to state courts until it is finally decided by the Supreme Court of the United States."

3. An important question involving the construction and administration of the Labor-Management Relations Act of 1947 is involved in this case. If the decisions of the Supreme Court of Alabama are left undisturbed, administration of the Act by the National Labor Relations Board in this and other states adopting similar views will be seriously hampered; it is not difficult to imagine the confusion and chaos which would result if the numerous state courts throughout the country were called upon to determine whether sufficient evidence of violations of the Federal Act were indicated to justify the granting of injunctive relief to private litigants while charges of the same violations may be pending before or under investigation by the Board charged by Congress to make such determinations, let alone if the numerous state courts are permitted, as has Alabama, to attempt to construe, interpret and apply the ramified provisions of the Taft-Hartley Act. Nor is it hard to conceive that some employers would invariably seek to circumvent that Board of specialists in favor of adjudicators more inclined to their views. Further, the Congressional intent, as clearly expressed under Section 10 of the Act, to limit the granting of equitable relief for alleged violations of the Act will be flouted. Labor organizations and their members in states holding views similar to that of the Alabama Supreme Court will be subjected to abuses of the injunctive process that gave rise to the passage of the Norris-LaGuardia Act in 1932 and the whole Federal policy of carefully restricting the use of injunctions in labor disputes, as expressed in the Norris-LaGuardia Act and as expressed in the Labor-Management Relations Act of 1947 in respect to disputes in industries affecting interstate commerce (see *Amazon Cotton Mill* v.

Textile Workers Union, supra, at 186), will come to naught. Clearly, it is in the public interest for this Court to resolve the question involved in this case.

4. The decision of the Alabama Supreme Court is believed to be erroneous. The argument advanced by that Court that the National Labor Relations Board might not take jurisdiction, and that therefore the State courts could, forgets, first, that the Board has not to this date ceded jurisdiction to any State agency in Alabama, as it is permitted to do under Section 10(a) of the Act, and in the absence of such express ceding, the Board has exclusive jurisdiction so that it is immaterial whether the Board may or may not assert jurisdiction, and, second, that the respondent Kinard has not to this date attempted to invoke the jurisdiction of the National Labor Relations Board as by the filing of charges under Section 10 or otherwise.

The determination by the Alabama Supreme Court that the State courts must have some unspecified type of inherent jurisdiction to protect against irreparable injury allegedly caused by violations of the Taft-Hartley Act is refuted by the fact that Congress has prescribed its own specific remedies for alleged violations of Taft-Hartley, which remedies do not contemplate any action by state tribunals in the absence of express secession by the Board to the states of such powers. Congress, under the 1947 Amendments to the National Labor Relations Act, intended to provide exclusive remedies, with enforcement of rights and obligations obtainable only as specified under the Act, and intended to preclude the granting of temporary relief by state courts such as was accorded by the Alabama courts in this case.

A. The language of the 1947 Act itself discloses such an intent. The 1935 Act, which lodged exclusive jurisdiction in the National Labor Relations Board to provide remedies for alleged violations, was greatly enlarged and expanded in 1947 so as to embrace numerous aspects of labor rela-

tions affecting interstate commerce. The need for continuing the 1935 policy of affording singleness and expertness of remedy by a public board acting in the public interest presumably was greater than ever, and Congress gave no indication whatsoever, either in the language of the Act or in its general structure, that it intended to change the concept of public administration to that of vindication of private rights by private litigants in numerous state and federal forums. Surely, very affirmative language indicating a desire to change the concept of remedy underlying the 1935 Act could be expected in the 1947 Amendments if Congress did actually intend so drastic a change. Far from any such affirmative language appearing, however, Congress continued to declare that the power given the Board under Section 10(a) to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." Even more significantly, it went on to add a new proviso to Section 10(a) prescribing exactly under what conditions the states could attempt to enforce the Act. None of these conditions (which include an express agreement by the Board to cede jurisdiction) have been met in the present case, and in their absence it must be assumed that state action stands excluded under the principle *expressio unis est exclusio alterius*. While the 1947 Congress, in conferring jurisdiction upon the federal Board to remedy unfair labor practices, eliminated the phrase "This power shall be exclusive" which appeared in the similar grant of jurisdiction under the 1935 Act, this omission is explained by the need for accommodation of two additional remedies appearing for the first time in the 1947 Act, and to accommodate the possibility that the Board might cede enforcement of jurisdiction to the states under the 10(a) proviso clause. The legislative history is conclusive that these were the reasons which motivated Congress in eliminating the "exclusive" clause from the 1947 Act.

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B. Sections 10(j), (k) and (l) of the 1947 Act contain detailed provisions specifying the manner in which temporary injunctive relief against alleged violations of the Act can be obtained; none of these provisions contemplate or permit suits by private individuals in the state courts. Accordingly, the rule which presumes preemption, as first announced in *Houston* v. *Moore*, 5 Wheat. 1, and as reaffirmed in numerous subsequent decisions,—that when Congress prescribes specific punishments or remedies, Congress has indicated the extent to which it is willing to go and desires no additional or even concomitant state remedy—is here applicable, as well as the corollary thereto—that where Congress has entered a field and afforded particular remedies or punishments, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. See *California* v. *Zook*, 336 U. S. 725, at 737.

C. Considerations of rationale and policy indicate Congressional intent to preclude the granting of preliminary injunctive relief in the state courts at the request of private individuals. With Congress at pains carefully to prescribe the type of remedy available for alleged violations, the forum in which such relief could be sought and the litigants empowered to seek relief, it is unreasonable to attribute a further intent to open wide the use of the injunctive processes to private litigants in the thousands of state courts throughout the forty-eight states. Surely, Congress could have contemplated no such crazy quilt of diversity nor such mire of confusion as would inevitably result, yet alone the reduction of the functions of the National Labor Relations Board to a state of idle impotency, with private individuals circumventing the orderly procedures contained in the federal Act in favor of those of any state forum they might consider more friendly to their interests. The policy of uniformity and expertness of administration would quickly be frustrated, and a direct conflict between procedures provided for in the Act and those which private liti-

gants in their astuteness could devise would repeatedly ensue—results which it cannot readily be assumed it was the desire of Congress to permit.

D. The legislative history of the 1947 Act conclusively indicates, in committee reports, in explanations tendered by sponsors of the bill, and in questions and answers appearing in the course of debates, that Congress intended (1) to continue the policy of public vindication of public rights by a public agency contained in the original Act, and (2) to exclude private remedies for violations or remedies other than those expressly provided for in the Act and, specifically, to exclude the granting of injunctions on the grounds of irreparable injury by the state courts unless permitted by the National Labor Relations Board under an express agreement. Further, the history of the 1947 Amendments before Congress afford a conclusive answer to the principal justification advanced by the court below in upholding jurisdiction in the state courts to issue injunctive relief, namely, that Congress could not have intended to oust state equity courts of their traditional function of granting injunctive relief to avoid irreparable injury. That same argument was advanced by Senator Taft and other sponsors of proposals to permit proceedings at the suit of private individuals for relief against irreparable injury in the state courts, and such proposals were voted down after a careful weighing by Congress of those arguments with the opposing arguments that unrestrained use of the injunctive process in labor disputes too readily lent itself to abuse. Congress having the power to make this determination, it is to Congress and not to this Court that any "irreparable injury" arguments should be addressed.

For relevant congressional history, see 93 Congressional Record 1912, 4841, 5040, 5041, 5074, and Senate Report No. 105 on S. 1126, 80th Congress, First Session, Page 8.

E. For judicial authority that Taft-Hartley has preempted the states in respect to jurisdiction to enforce the

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unfair labor practices specified in the Act, see *Bethlehem Steel Company* v. *New York Labor Relations Board*, 330 U. S. 767; *International Union* v. *O'Brien*, 330 U. S. 454; *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; and *Plankinton Packing Company* v. *Wisconsin Employment Relations Board*, 338 U. S. 953. The above line of authorities, commencing with the *Bethlehem Steel Company* case, all indicate that the Federal government has pre-empted the field of certain Congressionally defined unfair labor practices in industries affecting interstate commerce, so that state tribunals may not attempt to exercise even concomitant jurisdiction in respect to those labor activities concerning which Congress has made specific regulation. See also Cox and Seidman, "Federalism and Labor Relations," 64 Harv. L. Rev., 211, at 221. In particular see the decision and ruling of Judge Parker in *Amazon Cotton Mill Co.* v. *Textile Workers Union supra* in which the precise issue here involved is discussed at length and resolved in favor of exclusiveness of Federal remedy.

CONCLUSION AND PRAYER

For the foregoing reasons this petition for writ of certiorari should be granted. In addition, for the reason that the precise question herein has been thoroughly briefed and argued before this Court in *Montgomery Building and Construction Trades Council* v. *Ledbetter Erection Co., Inc.*, ——— U. S. ———, and for the further reason that, as seen by the motion attached hereto, the respondent herein has indicated that it will not make answer to this petition or participate in any future proceedings before this Court should this petition be granted, it is further prayed that this Court enter judgment on this petition reversing the decision of the court below.

Respectfully submitted,

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APPENDIX "A"

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

"Sec. 8. (b) It shall be an unfair labor practice for a labor organization or its agents——

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances";

"Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominately local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent

with the corresponding provision of this Act or has received a construction inconsistent therewith."

"Sec. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115)."

"Sec. 10. (j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

"Sec. 10. (l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition

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any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b) (4) (D)."

APPENDIX "B"

THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1952-53

8 Div. 678.

Kinard Construction Company

v.

Building Trades Council, et al.,

Appeal from Franklin County Law and Equity Court, (In Equity).

PER CURIAM:

This is an appeal from a final decree in equity, dated June 19, 1952, dissolving a temporary injunction, which had been granted February 4, 1952, denying a prayer for a permanent injunction, denying any other relief and dismissing the cause.

The bill was filed February 4, 1952, by appellant, whom we will designate as Kinard, seeking an injunction against several trade unions, unincorporated organizations alleged to be acting through their agency known as Building Trades Council.

The business of Kinard, sought to be protected by the injunction, was the construction of two housing projects at Russellville, Ala., under government authority and with its aid, whose costs was some $560,000. The original bill alleged that such work of Kinard affected and burdened interstate commerce and, therefore, the matters involved were controlled by the Labor Management Relations Act of June 23, 1947, known as the Taft-Hartley Act.

Later there was an amendment to the bill, and finally an amended bill having as one purpose the elimination of that

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feature of the original bill which stated that the business involved affected or burdened commerce and was subject to the Taft-Hartley Act, *supra*, and left out any reference to commerce whatsoever. The bill sought to enjoin respondents from picketing Kinard's construction work for the purpose, it is alleged, to coerce complainant into forcing its employees to be or become members of said labor unions or one of them, and for other purposes.

The suit was tried on the amended bill, filed after the trial court had ordered a temporary injunction which had been issued. We are not here concerned with the effect of the amended bill on that injunction.

The defendant filed a plea to the jurisdiction of the court, alleging facts sufficient to show that Kinard's said construction work did in fact affect interstate commerce and contended that this suit is therefore controlled by the Taft-Hartley Act, *supra*, and that under it neither a state court nor any other court could enjoin the unions from conducting an unfair labor practice so affecting commerce, except at the suit of the National Labor Relations Board.

Complainant contends that said Act does not apply because, (A) he purchases each year locally about $50,000 of the materials he uses on this project, and about $75,000 of the materials so used on the project were shipped to him in interstate commerce; and that all of his annual requirements for materials there used were about $500,000. (B) Because there is no controversy or labor dispute between him and his employees, involving a strike nor the right to strike, and that the Taft-Hartley Act only applies in respect to relations between employers and their employees, and not to unions trying to force membership by employees. And (C) that, although the Taft-Hartley Act does apply, a court of equity of the State may enjoin on the facts alleged when interstate commerce is affected no more than is here shown.

In support of Kinard's contention, designated A, *supra*, he refers to a "Release of National Labor Relations Board,

dated October 6, 1950," in which the board declared that it will exercise jurisdiction when any enterprise has a direct inflow of material valued at $500,000 a year, or an indirect inflow of material valued at $1,000,000 a year. It is contended for Kinard that neither the plea to the jurisdiction nor the evidence showed that Kinard's direct inflow in interstate commerce was as much as $500,000, or that his indirect inflow was as much as $1,000,000 a year.

But giving full force to the release of the board, *supra*, the effect is not that the Taft-Hartley Act does not apply. In the case of *Montgomery Building and Construction Trades Council* v. *Ledbetter*, 256 Ala. 678, 57 So. 2d 112, we held that said Act had application to determine the rights of the parties, and sustained the jurisdiction of the State court on account of the urgent need to prevent irreparable damage when the amount involved was not a burden on commerce, though it affected commerce, and we referred to the release of the board, *supra*. It is our view that such release does not shift the applicable statute from the Taft-Hartley Act to Alabama law. We think there is no power to do so, except legislative. And (C) we see no reason why at this time we should recede from our *Ledbetter case*, *supra*, in holding that a state court of equity has injunctive power in respect to a local enterprise, affecting commerce but not affecting its free flow nor creating a burden on it, and in respect to a business which uses material shipped in commerce within the limits of the release, *supra*, and when the acts of defendants are prohibited by the Taft-Hartley Act, working irreparable damage to a builder if not enjoined. If the business affects commerce, the Taft-Hartley Act applies to the extent there expressed.—Compare, *Katz Drug Co.* v. *Kavner*, 249 S. W. 2d (Mo.) 166; *National Labor Relations Board* v. *Denver Building and Construction Trades Council*, 341 U. S. 675, 71 S. Ct. 943.

We think the bill states facts which make it come under the influence of such holding, and that the plea to the jurisdiction was properly held by the court to be insufficient.

Probably a motion to strike it was not the appropriate way to test it. But we are not here concerned with that, and of course complainant, whose motion to strike the plea was sustained, cannot and does not complain of that ruling.

(B) Kinard also contends that the Taft-Hartley Act does not apply because it is made expressly to apply only "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce * * * to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce." —U. S. C. A. Title 29, section 141 (b). But the quotation does not necessarily include the full sweep of that feature of the Act. *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 S. Ct. 568. Moreover, that feature of it, which is quoted *supra*, to protect the rights of individual employees in their relations with labor oragnizations, etc., has direct and specific application to the instant situation. Also section 158 (b), Title 29, U. S. C. A. has particular reference to unfair labor practices charged to defendant unions in their relations with employees when commerce is affected.

So that, the right of Kinard to an injunction, we think, is controlled by the question of whether the defendant labor organizations are shown to have committed an unfair labor practice under that Act, which would result in irreparable damage unless enjoined, and when complainant's enterprise affects commerce and an injunction would not burden the inflow of commerce, and its effect on commerce is within the limits set by the board for an exercise of its jurisdiction.

We assume that the respondent labor organizations were engaged in peacefully picketing the works and enterprise of complainant to coerce complainant into agreeing that he would use in the same only union members, so as to designate the labor organization as the bargaining representative of the employees to make a union contract with complainant.

Affecting that status, it is noted that none of complainant's employees were dissatisfied or sought the end which

the unions demanded. The union wages, hours and working conditions were observed. To join the union laborers were required to pay large initiation fees and regular dues. They did not desire to do so. The union's purpose was to cause complainant to require them to do so. Was the picketing under those circumstances and for that purpose an unfair labor practice under the Taft-Hartley Act?

Section 158 (b) (1), Title 29, U. S. C. A. provides:

> "It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title * * * or (B) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances."

Section 157, Title 29, referred to above, is as follows:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by section 158 (a) (3) of this title," (which permits such a contract).

Section 158 (a) (1), Title 29, makes it "an unfair labor practice for an employer—

> "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title."

The result here sought seems to depend upon whether the respondent unions by the picketing, in which they engage and from which they were temporarily enjoined, were (A) coercing employees of Kinard "in the exercise of the rights

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guaranteed by section 157"; that is, to exercise a free choice in joining a labor organization and bargaining collectively, or not to do so; or were (B) coercing Kinard as an employer "in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances," or coercing his employees in exercising their rights under section 157, denounced as an unfair labor practice.

We see no plausible reason for a holding that it was not violative of section 158 (b) (1) (A) or 158 (a) (1), *supra*, if peaceful picketing is a form of coercion. It has been so declared. *Building Service Union* v. *Gazzam*, 339 U. S. 532, 70 S. Ct. 784; *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 69 S. Ct. 684.

The coercion of Kinard to employ union men only amounted to coercion of his employees to join the union in violation of the freedom guaranteed to them in section 157, *supra*, whether or not they wished to do so. *Building Service Union* v. *Gazzam*, *supra*.

The cases of *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293, 64 S. Ct. 126, and *Bakery and Pastry Drivers and Helpers Local 802 International Brotherhood of Teamsters* v. *Wohl*, 315 U. S. 769, 62 S. Ct. 816, relied on by appellees, were decided without the influence of an act such as the Taft-Hartley Act which prohibits coercion to force employees in the matter of deciding whether they will join a union or select a bargaining representative. That Act, when it applies, puts an entirely different theory on the right of labor organizations to engage in peaceful picketing. It must be for a lawful purpose to be justified. Without a legislative act it is not an unlawful purpose to picket to coerce unionization of employees. It is an unlawful purpose under the Taft-Hartley Act and some state statutes.

We have reached the conclusion that appellant was due to have a decree ordering appellees to be perpetually "enjoined from endeavoring to compel appellant to coerce his employees to join some one of appellee unions, by picketing his premises, or adjacent territory, where appellant is

engaged in the construction of the two housing projects in Russellville, Alabama."

The foregoing opinion was prepared by Foster, Supernumerary Judge of this Court while serving on it at the request of the Chief Justice, under authority of Title 13, section 32, Code, and it was adopted by the Court as its opinion.

The decree of the trial court is therefore reversed and a decree is here rendered permanently enjoining appellees as indicated above.

Reversed and rendered.

All the Justices concur.

LAWSON, JUSTICE:

The court finds that the picketing was peaceful. The conclusion of the court is not based on a holding that the objective of the pickets was unlawful under state law or that the objective ran counter to the established public policy of the state. See *Morris Klibanoff et al., d/b/a The Bootery,* v. *Tri-Cities Retail Clerks' Union, Local 1678, et al.,* Ala. Sup. Ct. MS, 8 Div. 690, this day decided.

Our conclusion is grounded on the finding that the picketing labor organizations have committed an unfair labor practice under the National Labor Relations Act, as amended, and on the holding that court of equity of this state has jurisdiction to enjoin such practice. There is no question here of a common law right, as was involved in the case of *Paul S. Russell* v. *International Union, etc.,* Ala. Sup. Ct. MS, 8 Div. 697, this day decided.

Our holding that courts of equity of this state have jurisdiction to enjoin such practice is based in the main on our case of *Montgomery Building and Construction Trades Council* v. *Ledbetter,* 256 Ala. 678, 57 So. 2d 112. The holding in the Ledbetter Case, *supra,* seems to be in accord with the conclusion reached by some state courts and contrary to that reached by others.

The question is a close one and will continue to prove

perplexing to state courts until it is finally decided by the Supreme Court of the United States. I see no occasion at this time to recede from the holding in the Ledbetter Case.

Simpson, J., concurs in these views.

THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

8th Div., No. 678
Kinard Construction Company,

Appellant,

vs.

Building Trades Council et al.,

Appellees.

From Franklin Law and Equity Court In Equity

The State of Alabama,
City and County of Montgomery,

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 9 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 13th day of March, 1953.

/s/ J. RENDER THOMAS,
Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama

FRIDAY, MARCH 13, 1953

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT:

CHIEF JUSTICE LIVINGSTON, ASSOCIATE JUSTICES BROWN, LAWSON, SIMPSON, STAKELY, GOODWYN, AND MERRILL, AND SUPERNUMERARY JUDGE FOSTER.

8 Div. 678

Kinard Construction Company, Incorporated,

vs.

Building Trades Council, an Unincorporated Association, et al.,

FRANKLIN LAW and EQUITY COURT

In Equity

No. 2114

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Law and Equity Court, In Equity, there is manifest error.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the decree of the Franklin County Law and Equity Court, In Equity, be and the same is hereby reversed and annulled, and this Court proceeding to render the decree that the Law and Equity Court, In Equity, should have rendered, DOTH CONSIDER, ORDER, ADJUDGE AND DECREE that the appellees (respondents) be and the same are hereby perpetually enjoined from endeavoring to compel appellant (complainant) to coerce its employees to join some one of appellee unions, by picketing its premises, or adjacent territory, where appellant is

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engaged in the construction of the two housing projects in Russellville, Ala.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the appellees:

Building Trades Council, an Unincorporated Association,
Carpenters Local Union No. 109,
Chauffeurs and Sales Drivers Local No. 402,
Roofers and Waterproofers Local No. 1108,
Hod Carriers Local No. 366,
International Brotherhood of Electrical Workers Local No. 558,
Iron Workers Union No. 477,
Bricklayers, Masons and Plasterers Local Union No. 8,
Painters Union No. 1293,

and

Plumbers and Steamfitters Local No. 760,

pay the costs of appeal of this Court and of the Franklin County Law and Equity Court, In Equity, for which costs let execution issue accordingly.

APPENDIX "C"

KINARD CONSTRUCTION COMPANY, INCORPORATED, COMPLAINANT, VS. BUILDING TRADES COUNCIL ET AL., RESPONDENTS.	IN THE LAW AND EQUITY COURT OF FRANKLIN COUNTY, ALABAMA IN EQUITY CASE NO. 2114

FINAL DECREE

In compliance with a former order of the Court, on this June 13, 1952, comes the complainant by its agent and solicitors of record and comes also the respondents by their agents and solicitors of record for a hearing in open court and for a ruling on the demurrer of the respondents to the bill of complaint as last amended, for a ruling on the respondents' motion to dissolve the temporary injunction, and for the taking of testimony in the cause and the submission of the same to the Court for a final decree on the merits of the same.

When the case is called for trial the respondents present to the Court their demurrer to the bill of complaint as last amended and request a ruling of the Court on the same.

Thereupon, after considering the said demurrer and the argument of counsel, the Court is of the opinion that the said demurrer is not well taken and should be overruled.

Therefore, it is ordered, adjudged and decreed by the Court that the said demurrer of the respondents' to the bill of complaint be and the same is overruled.

Thereupon, the respondents call the Court's attention to the fact that they have heretofore filed an answer in the cause, without waiving the demurrer to the bill of complaint but expressly insisting on the same.

Thereupon, the respondents move the Court to dissolve

the temporary injunction heretofore issued and the Court reserves its ruling on the motion of the respondents to dissolve the said temporary injunction until the Court hears the evidence and testimony in the cause, which is to be given orally in the presence of the Trial Judge in open court at this hearing on this day.

Thereupon, the parties begin the taking and introducing of the testimony and evidence to be presented in the cause and the entire day is consumed at this hearing, but late in the afternoon it is made known to the Court by the parties that there is much more testimony to be taken in the case.

Thereupon, the Court continues the hearing from this day to Monday, June 16, 1952, when the remainder of the testimony will be taken.

Thereupon, the taking of the testimony continues from June 16, through the afternoon of June 18, 1952, when it is made known to the Court by the parties that the testimony has been completed and that the cause is ready to be submitted to the Court for a final decree on the merits of the same as well as on the motion to dissolve the injunction. And it is so ordered and adjudged by the Court that the cause is submitted to the Court for such a decree and the Court takes the cause under advisement to consider the same.

Now on this June 19, 1952, it is ordered and adjudged by the Court that all of the illegal testimony is excluded and that the Court only considers the legal testimony in the case.

After considering the pleadings and testimony, all of which testimony was given in the absence of the Trial Judge in open court. The Court is of the opinion that the motion to dissolve the injunction is well taken and that it should be dissolved.

Therefore, it is ordered and adjudged by the Court that the Temporary injunction be and the same is hereby dissolved effective on Midnight, June 25, 1952, but that the said injunction shall remain in full force and effect until that date.

The Court further finds from the pleadings and proof that the complainant is not entitled to the relief prayed for in its bill of complaint.

Therefore, it is ordered, adjudged and decreed by the Court that the relief prayed for in the bill of complaint by the complainant is denied and it is further ordered by the Court that this cause is dismissed.

It is further ordered and adjudged by the Court that the complainant shall pay the costs accrued herein, for all of which let execution issue.

It is further ordered, adjudged and decreed by the Court that in the event a motion or application for a rehearing is filed in this cause in this Court the operation of this decree shall not be suspended and the injunction shall not be in force and effect pending the consideration of and the ruling on the said application for a rehearing.

It is further ordered and adjudged by the Court that in the event an appeal is taken to the Supreme Court from this decree, the injunction shall not be in force and effect pending the complainant's appeal to the Supreme Court, unless the injunction is reinstated by an order of the Supreme Court.

Dated this June 19, 1952.

W. H. Quillin,
Judge of the Law and Equity Court of Franklin County, Alabama, Sitting in Equity.

Filed in Office: 19th day of June, 1952.

Grace M. Smith, *Register.*

EXHIBIT 1

April 17, 1953

Woll, Glen, & Thatcher
736 Bowen Building
Washington 5, D. C.

Gentlemen:

RE: Muscle Shoals Building and
Trades Council, et als
VS: Kinard Construction Company, Inc.
In the Supreme Court of
Alabama
8 Div. 678

It is the understanding of the officers of Kinard Construction Company, Incorporated that your firm has filed or is filing in the Supreme Court of the United States a petition for writ of certiorari to the Supreme Court of Alabama in the above styled cause.

As attorneys for the unions involved, you have requested that in view of the voluminous certified record from the Supreme Court of Alabama that this company agree with you to an abridgment of the record in the Supreme Court of the United States.

In reply thereto, we regret to advise that we are no longer represented by counsel since the counsel previously retained represented us only through the Supreme Court of Alabama. We have not and cannot employ counsel to represent us in connection with the appeal to the United States Supreme Court because we have no money with which to employ such counsel. Furthermore, we are advised by attorneys previously representing us that it would be in our best interest not to have the record abridged and that any abridgment could be properly made only with legal representation, which we are not in a position to employ for lack of money. In these circumstances we do not see how we could agree to any abridgment of the record.

Yours very truly,

KINARD CONSTRUCTION COMPANY, INC.

J. Paul Kinard

By:
J. Paul Kinard
Its President

IN THE

Supreme Court of the United States

October Term, 1952

No. —

BUILDING TRADES COUNCIL, ET AL.,
Petitioners,

v.

KINARD CONSTRUCTION COMPANY,
Respondent.

MOTION TO DISPENSE WITH PRINTING OF RECORD

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes the petitioners by their counsel herein and move this Court for leave to dispense with printing the record in the above entitled cause, and as reasons therefor state as follows:

1. The record herein is extremely lengthy. None of the material therein, other than the final decision and decree of the Supreme Court of Alabama, is necessary for consideration by this Court of the issue involved in this petition for certiorari. No findings of fact were made by the Trial Court.[1] The Supreme Court of Alabama did, however, make factual findings as to the nature and purpose of the

[1] A copy of the Trial Court's decree is attached to the petition for certiorari herein as part of Appendix "C."

picketing and in respect to whether respondent's operations sufficiently affected interstate commerce so as to make applicable the provisions of the Taft-Hartley Act. These are all the facts necessary to a determination of the single issue in this case, which is whether a state court has jurisdiction to enjoin picketing which allegedly violates the union unfair labor practice section (Sec. 8(b) et seq.) of the Taft-Hartley Act.[2]

The record in this cause, certified from the Supreme Court of Alabama, consists of 545 typewritten pages, each of them 10½ inches in width and 16 inches in length.[3] This lengthy record consists of various pleadings and motions before the Trial Court together with evidence of some thirty-eight witnesses for the complainant below, respondent here, and nineteen witnesses for the defendants below, petitioners here, concerning the nature and purpose of the picketing. All issues raised by such pleadings and motions and the factual questions raised by the conflicting testimony of the various witnesses were resolved by the findings and conclusions made by the Supreme Court of Alabama in its decision and decree.

2. Petitioners herein are unable to obtain any stipulation whatsoever from the respondent herein for the omission of any portion of the lengthy record in this case. Thus, petitioners are required to print, at their own expense the entire record, and it is likely, indeed it seems certain, that petitioners will be unable to recover any of such printing costs from respondent under Supreme Court Rule No. 38, par. 8, due to the fact that respondent, to petitioners' best information and belief, would be unable to meet such payment. The Clerk of this Court has estimated the cost of printing this entire record as approximating $2,500.00. When petitioners requested respondent to stipulate for the omission of the printing of major portions of the record,

[2] A copy of the decision and decree of the Supreme Court of Alabama is attached to the petition for certiorari herein as Appendix "B."

[3] A certified copy of this record has been deposited with the Clerk of this Court for this Court's information and convenience.

respondent replied, both by telephone and by letter, a copy of which is attached hereto as Exhibit "1", that it would not so stipulate, that it would not employ counsel for the purpose of stipulation or for the purpose of further participation in this matter before this Court, and further stated that it had no money to undertake any further expenses, legal or otherwise.

WHEREFORE, petitioners respectfully pray this Honorable Court to grant this motion for leave to dispense with the printing of the record herein and to proceed to consider the petition for certiorari herein on the basis of the decision and decree of the Supreme Court of the State of Alabama.

Respectfully submitted,

HENRY A. BRADSHAW,
GEORGE E. BARNETT,
E. B. HALTOM, JR.,
Florence, Alabama.

J. ALBERT WOLL,
HERBERT S. THATCHER,
JAMES A. GLENN,
736 Bowen Building,
Washington 5, D. C.

Counsel for Petitioners.

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